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Response to Competition and Markets Authority's consultation on new digital markets competition guidance

Vivaldi, launched in 2016, is a powerful, personal & private web browser (for desktop, mobile and in-car) that adapts to its users and offers more features than any other modern browser.

Vivaldi's has two ground rules: privacy is a default, and everything's an option. In practice, this means building software that protects users' privacy but also does not track how they use it. Vivaldi believes private and secure software should be the rule, not the exception.

Vivaldi is headquartered in Norway, with satellite offices in Iceland and USA. It has no external investors and is co-owned by its approximately 50 employees.

There are currently 3,100,000 active users world-wide, [REDACTED] of whom are in UK (as are [REDACTED] employees).

Section 2 of 'Guidance' [Digital markets competition regime guidance CMA194con DRAFT]

SECTION 2.4

We support a regime under which the most powerful organisations are regulated on *activities*, not named *products*: "Firms are designated as having SMS in respect of a digital activity"

However, we would appreciate more clarification on what constitutes a "digital activity", and what does not. Is "activity" a term of art in UK law? Does it describe a generic digital task performed by a software *user*, such as "browse the internet", "download and play music", "edit a spreadsheet", or is it more general and can describe the activities (rather than products) of a software *vendor*?

Guidance (and the Act) says

For the purposes of this Part, the following are "digital activities"-

(a) the provision of a service by means of the internet, whether for consideration or otherwise;

(b) the provision of one or more pieces of digital content, whether for consideration or otherwise;

(c) any other activity carried out for the purposes of an activity within paragraph (a) or (b).

Vivaldi notes that Microsoft Windows steers users towards using Microsoft's Edge browser, even after the user has chosen to download a different browser and chosen to switch the default to the third party browser. (Tested on a new install of Windows 10, in UK, 9 July 2024.)

Settings		×
ය Home	Default apps	
Find a setting $ ho$	Photo viewer	
Арря	Before you switch	
🔚 Apps & features	Try Microsoft Edge-it is new, it's fast, and it's built Vide for Windows 10.	
E Default apps	Try it out	
Cffline maps	Switch anyway	
LtJ Apps for websites	Wet	
□ Video playback	Microsoft Edge	
⊊ Startup	Reset to the Microsoft recommended defaults	
	Reset	
	Choose default applications by file type	
	Choose default applications by protocol	

Screenshot of Windows 10 dialogue after choosing to switch default browser to Vivaldi: "Before you switch Try Microsoft Edge-it is new, it's fast, and it's built for Windows 10". The most prominent button says "Try it out".

This steering seems to us to be "the provision of one or more pieces of digital content" for self-preferencing by Microsoft. The Windows operating system might not be downloaded by the end-user over the internet (for example, it may have been installed by an OEM).

Would this self-preferencing steering be classified as a "digital activity" that could merit a pro-competition intervention?

SECTION 2.10

Section 2.10 states "the CMA may consider how the potential SMS firm structures itself and its business model, how businesses and consumers use and access its products and any interlinkages among them".

We agree with this approach. The large organisations that are likely to be given SMS designation often cross-promote and self-preference in a bewildering number of ways, and product-based regulatory regimes can miss them.

As an example, Vivaldi had to devote time and resources to a workaround to prevent popular Google services (and Microsoft Teams) sending a worse experience to Vivaldi users.

Despite using exactly the same internal engine as Google Chrome (and Microsoft Edge), Vivaldi user were told to "upgrade" to a "supported browser":



Screenshot of Google Docs rendered by a previous version of Vivaldi with a warning "the version of the browser you are using is no longer supported. Please upgrade to a supported browser".

Other examples, before we amended our products to work around such blocks, include:

- On Google.com, presenting a Vivaldi user agent and arriving via a redirect, the search text box was misaligned so typing search terms did not go into the search field.
- On Facebook's WhatsApp web interface, if you presented a Vivaldi user agent, you could not enter the site and were advised to switch to one of our competitors
- On Microsoft Teams (chat and collaboration website), presenting a Vivaldi user agent stopped you from being able to use the website

Such practices (whether accidental or deliberate) can lead users to blame their browser rather than the web site, and can ultimately lead to users switching to a different browser. Other browsers are similarly affected - see <u>https://www.zdnet.com/article/former-mozilla-exec-google-has-sabotaged-firefox-for-years/</u> for more.

We encountered websites that block the exact string "Vivaldi", with no contact or warning to us. This could be clearly seen by us in testing, by intentionally misspelling our name by one character in our User Agent, e.g. "Vivaldo" or "Vxvaldi", and then not being blocked.

The workaround was to amend our browser to hide the name "Vivaldi" in requests to the website, and instead to pretend to be Google Chrome. See <u>https://vivaldi.com/blog/user-agent-changes/</u> and <u>https://www.zdnet.com/</u> <u>article/vivaldi-to-change-user-agent-string-to-chrome-due-to-unfair-blocking/</u> for more information.

A downside to Vivaldi's workaround is that it makes Vivaldi browsers invisible to browser statistics packages because it is now indistinguishable from Chrome, so Vivaldi will effectively disappear from third party rankings of browser popularity.

Note that Google Docs is an online word processor, so is not a product competitor of Vivaldi, but the effect is nevertheless to erode the perceived utility of a product that does directly compete with Google Chrome.

It is our hope that the CMA's regulatory regime can target such anticompetitive behaviours by looking at the SMS as a whole rather than individual products.

SECTION 2.37

We reiterate our wish for clarifying guidance on what constitutes a "digital activity". Sections 2.37c and 2.37d seem to suggest that our previously noted example (of Microsoft using its dominant and entrenched Windows operating system to make it more difficult for third parties to compete against Microsoft's non-dominant, non-entrenched Edge) would put the firm in a position of Strategic Significance:

A firm has a position of strategic significance in respect of a digital activity

where one or more of the following conditions is met:

(c) the undertaking's position in respect of the digital activity would allow it to extend its market power to a range of other activities;

(d) the undertaking's position in respect of the digital activity allows it to determine or substantially influence the ways in which other undertakings conduct themselves, in respect of the digital activity or otherwise.

CONCLUSION

If our assumptions above are correct, Vivaldi broadly supports the CMA's proposed regulatory approach, and we would welcome the opportunity to discuss our experience as a small, independent browser manufacturer attempting to compete against large entrenched vendors in the UK marketplace.